



ACQUISITION AND
TECHNOLOGY

DP (DAR)

OFFICE OF THE UNDER **SECRETARY** OF DEFENSE

3000 DEFENSE PENTAGON
WASHINGTON DC 20301 **3000**

April 29, 1996

50"
WORLD WAR II

0

In reply refer to
DFARS Case: 95-D039
D. L. 96-009

MEMORANDUM FOR DIRECTORS OF DEFENSE AGENCIES
DEPUTY FOR ACQUISITION AND BUSINESS MANAGEMENT,
ASN(RD&A) /ABM
DEPUTY ASSISTANT SECRETARY OF THE AIR FORCE
(CONTRACTING) , SAF/AQC
DIRECTOR, PROCUREMENT POLICY, ASA(RD&A)/SARD-PP
DEPUTY DIRECTOR (ACQUISITION),DEFENSE LOGISTICS
AGENCY

SUBJECT: Small Disadvantaged Business Concerns

We have amended the Defense Federal Acquisition Regulation Supplement (DFARS) to implement initiatives designed to facilitate awards to small disadvantaged businesses (SDBs) while taking account of the Supreme Court's decision in Adarand Constructors, Inc. v. Pena, 63 U.S.L.W. 4523 (U.S. June 12, 1995).

The attached final rule includes contracting procedures that: (1) expand the use of the evaluation factor for SDBs, to include competitive awards based on other than price or price related factors; (2) consider small, small disadvantaged, and women-owned small business subcontracting as a factor in the evaluation of past performance; (3) clarify **that the contracting officer will weigh enforceable commitments to use small businesses, SDBs, women-owned small businesses, and historically black colleges and universities, and minority institutions more heavily than non-enforceable ones, if the commitment to use such firms is included in the solicitation as a source selection criterion;** (4) require prime contractors to notify the contracting officer of any substitutions of firms that are not small, small disadvantaged, or women-owned small businesses for the firms listed in the subcontracting plan; and (5) establish a test program of an SDB evaluation preference that would remove

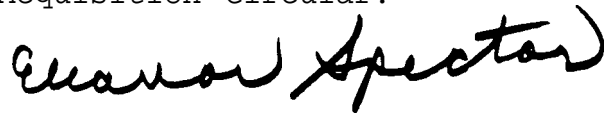
ENCLOSURE(2)

MAY 01 1996



bond cost differentials between SDBS and other businesses as a factor in most source selections for construction acquisitions.

This DFARS rule is effective immediately and will be included in a future Defense Acquisition Circular.

A handwritten signature in black ink, reading "Eleanor Spector". The signature is fluid and cursive, with the first name "Eleanor" and the last name "Spector" clearly distinguishable.

Eleanor R. Spector
Director, Defense Procurement

Attachment

cc: DSMC, Ft Belvoir

PART 215--CONTRACTING BY NEGOTIATION

★ ★ ★ ★ ★

SUBPART 215. 6--SOURCE SELECTION

215.605 Evaluation factors [and subfactors].

(b) ★ ★ ★

(ii) • ★ ★

(B) The extent of commitment to use such firms [(for example, enforceable commitments are to be weighted more heavily than non-enforceable ones)] ;

★ ★ ★ ★ ★

(E) [When not otherwise required by 215.608 (a) (2) ,] **Prior** [past] performance of offerors in complying with requirements of the clauses at FAR 52.219-8, Utilization of Small[,] ~~Business Concerns and Small Disadvantaged~~ [and Women-Owned Small] Business Concerns, and 52.219-9, Small[, Small Disadvantaged and Women-Owned Small] Business ~~and Small Disadvantaged Business~~ Subcontracting Plan; and

• " " " "

[(iv) When an evaluation includes the criterion in paragraph (b) (ii) (A) of this section, the small, **small** disadvantaged, or **women-owned** small businesses considered in the evaluation shall be listed in any subcontracting plan submitted pursuant to FAR 52.219-9 to facilitate compliance with 252.219-7003(g) .1

★ ★ ★ ★ ★

215.608 Proposal evaluation.

(a) [(1)1 • ★ ★

[(2) When a past performance evaluation **is** required by FAR 15.605, and the solicitation includes the clause at FAR 52.219-8, Utilization of Small, Small Disadvantaged and Women-Owned Small Business Concerns, the evaluation **shall** include the past performance

of offerors in complying with requirements of that clause. When a past **performance** evaluation is required by FAR 15.605, and the solicitation includes the clause at FAR 52.219-9, Small, Small Disadvantaged and Women-Owned Small Business Subcontracting Plan, the evaluation shall include the past **performance** of offerors in complying with requirements of that clause.]

• • • • •

PART 219--~~SMALL BUSINESS AND SMALL DISADVANTAGED BUSINESS CONCERNS~~
[SMALL BUSINESS PROGRAMS]

219.704 Subcontracting plan requirements.

(a) • • •

[(4) In those subcontracting plans which specifically identify small, small disadvantaged, and women-owned small businesses, prime contractors shall notify the administrative contracting officer of any substitutions of firms that are not **small**, small disadvantaged, or women-owned **small** businesses for the firms listed in the subcontracting plan. Notifications shall be in writing and shall occur within a reasonable period of time after award of the subcontract. Contractor-specified formats shall be acceptable.]

• • • • •

219.1006 Procedures.

(b) • • • *

(1) • • • •

(B) The evaluation preference at 219.70 shall not be used.
[However, note the test program at 219.72 for construction acquisitions.]

* • • • •

219.7001 Applicability.

(a) The evaluation preference shall be used in competitive acquisitions ~~where award is based on price and price related factors.~~
~~The preference may be used at the discretion of the source selection~~

~~authority in other competitive acquisitions~~ [except as provided in paragraph (b) of this section and in 219.1006(b) (1)(B)].
* * * * *

[219 .72- -EVALUATION PREFERENCE FOR SMALL DISADVANTAGED BUSINESS (SDB) CONCERNS IN CONSTRUCTION ACQUISITIONS--TEST PROGRAM

219.7200 Policy.

DoD policy is to ensure that, during this test program, offers from small disadvantaged business (SDB) concerns shall be given an evaluation preference in construction acquisitions.

219.7201 Administration of the test program.

The test program will be conducted over a 36-month period. The test program will be conducted by all DoD contracting activities that award construction contracts. The focal point for the test program is the Director, Small and Disadvantaged Business Utilization, Office of the Under Secretary of Defense for Acquisition and Technology (Director, SADBUE). The military departments and defense agencies shall submit status reports to the Director, SADBUE. The first status report shall be submitted 18 months after initiation of the test program; the second status report shall be submitted 36 months after initiation of the test program. These reports shall specify the impact of the evaluation preference over each of the reporting periods of the test program, and shall provide recommendations with respect to continuation and/or modification of the evaluation preference.

219.7202 Applicability.

(a) The evaluation preference shall be used in competitive acquisitions for construction (see definition in FAR Subpart 36.1) when work is to be performed inside the United States, its territories or possessions, Puerto Rico, the Trust Territory of the Pacific Islands, or the District of Columbia.

(b) Do not use the evaluation preference in acquisitions which--

(1) Are less than or equal to the simplified acquisition threshold;

(2) Are set aside for small businesses; or

(3) Are awarded under section 8(a) procedures.

(c) The evaluation preference need not be applied when the head of the contracting activity determines that the evaluation preference is having a disproportionate impact on non-SDB concerns or non-disadvantaged small business concerns.

219.7203 Procedures.

(a) Solicitations that require bonding shall require offerors to separately state bond costs in the offer. Bond costs include the costs of bid, performance, and payment bonds.

(b) Evaluate total offers. If the apparently successful offeror is an SDB concern, no preference-based evaluation is required under this subpart.

(c) If the apparently successful offeror is not an SDB concern, evaluate offers excluding bond costs. If, after excluding bond costs, the apparently successful offeror is an SDB concern, add bond costs back to all offers, and give offers from SDB concerns a preference in evaluation by adding a factor of 10 percent to the total price of all offers, except--

(1) Offers from SDBS which have not waived the evaluation preference; and

(2) Offers from historically black colleges and universities or minority institutions, which have not waived the evaluation preference.

(d) When using the procedures in 236.303-70, Additive or deductive items, the evaluation preference in this subpart shall be applied.

219.7204 Contract clause.

Use the clause at 252.219-7008, Notice of Evaluation Preference for Small Disadvantaged Business Concerns--Construction Acquisitions--Test Program, in all solicitations--

(1) That involve the evaluation preference of this subpart;

and

(2) Where work is to be performed inside the United States, its territories or possessions, Puerto Rico, the Trust Territory of the Pacific Islands, or the District of Columbia.]

• " " " "

PART 236--CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

• " " " "

236.303-70 Additive or deductive items.

★ ★ ★ ★ ★

(c) • • •

(2) Evaluate all bids[, including those using the procedures in 219.7203,] on the basis of the same additive or de-du-ctive bid items.

• " " " "

PART 242 --CONTRACT ADMINISTRATION

[SUBPART 242.15 --Contractor Performance Information

242.1503 Procedures.

Evaluations should consider any notifications submitted under paragraph (g) of the clause at 252.219-7003, **Small, Small Disadvantaged and Women-Owned Small Business Subcontracting Plan (DoD Contracts)** .1

★ ★ ★ ★ ★

PART 252- -SOLICITATION PROVISIONS AND CONTRACT CLAUSES

• " " " "

252.219-7003 **Small, Small Disadvantaged and Women-Owned Small Business Subcontracting Plan (DoD Contracts)** .

• " " " "

**SMALL, SMALL DISADVANTAGED AND WOMEN-OWNED SMALL BUSINESS
SUBCONTRACTING PLAN (DOD CONTRACTS) (APR 1996)**

★ ★ ★ ★ ★

[(g) In those subcontracting plans which specifically identify small , small disadvantaged, and women-owned small businesses, the

Contractor shall notify the Administrative Contracting officer of any substitutions of firms that are not ~~small~~, ~~small~~ disadvantaged, or women-owned small businesses for the ~~firms~~ listed in the subcontracting plan. Notifications shall be in writing and shall occur within a reasonable period of time after award of the subcontract. Contractor-specified formats shall be acceptable.]

• * * * *

[252.219-7008 Notice of Evaluation Preference for Small Disadvantaged Business Concerns--Construction Acquisitions--Test Program.
As prescribed in 219.7204, use the following clause:

NOTICE OF EVALUATION PREFERENCE FOR SMALL DISADVANTAGED BUSINESS
CONCERNS --CONSTRUCTION ACQUISITIONS--TEST PROGRAM (APR 1996)

(a) Definitions.

As used in this clause--

"Historically black colleges and universities (**HBCUs**)," means institutions determined by the Secretary of Education to meet the requirements of 34 CFR Section 608.2. The term also means any nonprofit research institution that was an integral part of such a college or university before November 14, 1986.

"Minority institutions," means institutions meeting the requirements of paragraphs (3), (4), and (5) of Section 1046(3) of the Higher Education Act of 1965 (20 U.S.C. 1135d-5(3)). The term also includes Hispanic-serving institutions as defined in Section 316(b) (1) of such Act (20 U.S.C. 1059c(b) (1)) .

"Small disadvantaged business (SDB) concern," means a small business concern, owned and controlled by individuals who are both socially and economically disadvantaged, as defined by the Small Business Administration at 13 CFR Part 124, the majority of earnings of which directly accrue to such individuals. This term also means a small business concern owned and controlled by an economically disadvantaged Indian tribe or Native Hawaiian organization which meets the requirements of 13 CFR 124.112 or 13 CFR 124.113, respectively.

(b) Evaluation preference.

(1) Offerors shall separately state bond costs in the offer. Bond costs include the costs of bid, performance, and payment bonds.